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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,143	01/02/2004	David Odell Simmons		4417

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AUSTIN, TX 78731

EXAMINER

WAGGONER, TIMOTHY R

ART UNIT	PAPER NUMBER
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3651

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/751,143

Applicant(s)

SIMMONS, DAVID ODELL

Examiner

Timothy R. Waggoner

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-22 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-11 and 13 is/are rejected.
- 7) ☒ Claim(s) 5, 12, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>01/02/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3,4,6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domberg et al. USPN 5097986. Claims 1- are directed to the specifics of the "packaged pizza components". The MPEP states that "Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim" Ex parte *Thibault*, 164 USPQ 666, 667 (Bc. App. 1969). Furthermore, "[i]nclusion of material or articles worked upon by a structure being claimed does not impart patentability to the claims." *In re Young*, 75 F.2d 996, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458,459 (CCPA)). Domberg discloses a dispenser capable of dispensing packaged pizza components therer it anticipates the functionality..

Claims 1,3,4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domberg et al. USPN 5,097,986.

(Re claim 1) "a first product dispensing unit" (3 figure 2, bottom shelves). "a second dispensing unit" (3 figure 2, top shelves). "an apparatus coupled to the first product dispensing unit and the second dispensing unit ... input and processing ... kit order" (22 figure 1).

(Re claim 3) "the first product dispensing unit includes a plurality of pizza crust" (3 figure 2, bottom shelves). "the second product dispensing unit includes a plurality of packaged pizza topping" (3 figure 2, top shelves).

(Re claim 4) "first product dispensing unit is configured for enabling different types of packaged pizza crust" (3 figure 2, bottom shelves). "second product dispensing unit is configured for enabling different types of packaged pizza topping" (3 figure 2, top shelves).

(Re claim 6) "Kit component management arrangement configured for managing kit component inventory" This statement does not define over any for of inventory management therefore any inventory management used by Domberg would anticipate this claim.

Claims 7,8,10,11,13 rejected under 35 U.S.C. 103(a) as being unpatentable over Domberg as applied to claims 1,3,4 and 6 above, and further in view of Le Claire et al. USPN 5,121,677.

(Re claim 7) Domberg discloses a vending machine capable of accepting orders for individual components.

Domberg does not disclose accepting a complete order at once.

Le Claire teaches a vending machine for pizza with a control interface capable of accepting a complete pizza order and processing the information to dispense all the components.

It would be obvious to one skilled in the art to modify Domberg to use an entry system as taught by Le Claire because it allows for faster ordering of combinations of articles.

(Re claim 8) "a first product dispensing unit" (3 figure 2, bottom shelves). "a second dispensing unit" (3 figure 2, top shelves). "an apparatus coupled to the first

product dispensing unit and the second dispensing unit ... input and processing ... kit order" (22 figure 1).

(Re claim 10) "the first product dispensing unit includes a plurality of pizza crust" (3 figure 2, bottom shelves). "the second product dispensing unit includes a plurality of packaged pizza topping" (3 figure 2, top shelves).

(Re claim 11) "first product dispensing unit is configured for enabling different types of packaged pizza crust" (3 figure 2, bottom shelves). "second product dispensing unit is configured for enabling different types of packaged pizza topping" (3 figure 2, top shelves).

(Re claim 13) "Kit component management arrangement configured for managing kit component inventory" This statement does not define over any for of inventory management therefore any inventory management used by Domberg would anticipate this claim.

Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Domberg as applied to claims 1 and 7 above, and further in view of Ficken et al. USPN 5,236,103.

Domberg disclose a vending maching capable of dispensing either refridgerated or frozend products.

Domberg does not disclose having both refrigerated and frozen product areas.

Ficken teaches having a segregated area in a vending machine for refrigerated or frozend articles.

It would be obvious to one skilled in the art to modify Domberg to include a separate compartment for frozen articles inside its refrigerated machine because it allows for dispensing of both frozen and refrigerated articles.

Allowable Subject Matter

Claims 5,12,14 and 15 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16-22 are allowed over the present prior art.

Conclusion

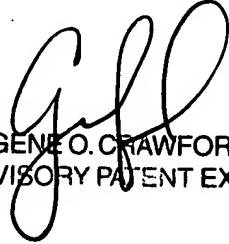
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. USPNs 6,801,228 and 6,526,874.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy R. Waggoner whose telephone number is (571) 272-8204. The examiner can normally be reached on Mon-Thu 8am-2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TRW



GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER